

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NORTH DAKOTA
3 SOUTHEASTERN DIVISION

4 - - - - -

5 United States of America,)

6 Plaintiff,)

7 vs.)

8 Ferris Lavelle Lee, a/k/a Vito,)

9 Marcus Jermaine Royston,)

10 a/k/a BD, Maurice M. Forest,)

11 Jessica M. Dietz,)

12 Defendants.)

13 - - - - -

FILE NO. 3:09-cr-155-01

3:09-cr-155-02

3:09-cr-155-04

3:09-cr-155-08

14 T R A N S C R I P T

15 O F

16 P R O C E E D I N G S

17 JURY TRIAL - VOLUME XIII - MAY 28, 2010

18 Pages 2084-2121

19 TAKEN AT: QUENTIN BURDICK UNITED STATES COURTHOUSE
20 655 FIRST AVENUE NORTH
21 FARGO, NORTH DAKOTA 58102

22 BEFORE: THE HONORABLE RALPH R. ERICKSON

23 COURT REPORTER: KELLY A. KROKE

A P P E A R A N C E S

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1 P R O C E E D I N G S

2 (May 28, 2010: The following proceedings
3 commenced at 8:45 a.m.; In open court, all counsel and
4 the Defendants not present, in the presence and hearing
5 of the jury:)

6 THE COURT: We're on the record in a case
7 entitled United States of America versus Ferris Lee, et
8 al. It's file No. 3:09-cr-155. The record should
9 reflect that the defendants and the United States have
10 waived their appearance here this morning. At this
11 point without having anyone to waive the polling of the
12 jury, we will poll the jury.

13 THE CLERK: For real?

14 THE COURT: Yeah, for real.

15 THE CLERK: Arthur Grochow?

16 FOREPERSON GROCHOW: Here.

17 THE CLERK: Dorothy Jorgenson?

18 JUROR JORGENSEN: Here.

19 THE CLERK: Louise Tengwall?

20 JUROR TENGWALL: Here.

21 THE CLERK: Nancy Johnson?

22 JUROR N. JOHNSON: Here.

23 THE CLERK: Evelyn Sova?

24 JUROR SOVA: Here.

25 THE CLERK: Ashley Johnson?

1 JUROR A. JOHNSON: Here.

2 THE CLERK: John Olson?

3 JUROR OLSON: Here.

4 THE CLERK: Everlyn Anderson, Jr?

5 JUROR ANDERSON: Here.

6 THE CLERK: Christine Maddock?

7 JUROR MADDOCK: Here.

8 THE CLERK: Gregory Arthur?

9 JUROR ARTHUR: Present.

10 THE CLERK: Pamela Oberlander.

11 JUROR OBERLANDER: Here.

12 THE CLERK: And Ann Oksendal?

13 JUROR OKSENDAHL: Here.

14 THE COURT: It appears that all of the
15 jurors are present. Ladies and gentlemen of the jury,
16 has anything happened to you since you were last here
17 that would affect your ability to be fair and impartial?

18 (Jury indicating no.)

19 THE COURT: Has anyone spoken to you or
20 attempted to speak to you since we were last here?

21 (Jury indicating no.)

22 THE COURT: You may return to the jury room
23 to continue your deliberations.

24 (Recess taken; 8:50 a.m. to 11:15 a.m.)

25 (11:15 a.m., In open court, all counsel and

1 the Defendants present, outside the presence and hearing
2 of the jury:)

3 THE COURT: We'll go on the record in a case
4 entitled United States of America versus Ferris Lee,
5 Marcus Royston, Maurice Forest and Jessica Dietz. The
6 record should reflect that Mr. Lee appears personally
7 along with his counsel, Mr. Goff. Mr. Royston appears
8 personally along with his counsel, Mr. Mottinger.
9 Mr. Forest appears personally along with his counsel,
10 Mr. Loos. Ms. Dietz appears personally along with her
11 counsel, Ms. Goetz. Mr. Myers and Ms. Lawyer appear on
12 behalf of the United States.

13 I have received a question from the jury.
14 The question reads as follows: Is each defendant
15 reviewed independently to Indictment #1, Instruction #5?
16 There is a question, if someone, slash, everyone is
17 found guilty of a conspiracy do they each get separate
18 consideration in relation to 50 grams/500
19 grams/marijuana. It's 50 grams, slash, 500 grams,
20 slash, marijuana (per instruction) or are we only
21 looking at 50 grams/500 grams as listed in the verdict
22 form? Or to say otherwise if "conspiracy" is found for
23 everyone is 50 grams and/or everyone "500 grams" and/or
24 marijuana, question mark. Arthur Grochow.

25 All right. Here's what I know. I took it

1 under advisement at the very beginning of the trial.
2 Mr. Myers' objection to including the quantities in the
3 essential elements, I told all of you that I was going
4 to take it out and then I never took it out. And I read
5 it to them twice and nobody objected, probably because
6 my ruling wasn't all that plain, and it's the kind of
7 madness that judges sometimes undertake. But I think
8 they've got that question.

9 I think their first question really is: I'm
10 looking at your essential elements under Count One and
11 I'm looking at your instruction that the government
12 doesn't have to prove quantity and I'm confused. I
13 think that's their first question.

14 I think their second question is: Once we
15 get to anyone we have actually convicted of conspiracy,
16 do we consider the parties individually as to the 50
17 grams, the 500 grams and the marijuana? And, of course,
18 the answer to the second question is that's when we know
19 the answer. We know that the case law establishes that
20 a conspirator is only responsible for sentencing
21 purposes, and that's what we're talking about here, for
22 the quantity of drugs involved in the conspiracy that
23 was reasonably foreseeable in light of the conspirators'
24 agreement to participate in the conspiracy, right? I
25 think that answer we know.

1 It's the first part that's really troubling
2 to me. And I also would say the question is not a
3 clarity -- is not a picture of clarity because if you
4 read the question it's sort of like reading tea leaves.
5 But I do think that they have told us: We can't figure
6 out 1 and 5 and how they fit together.

7 And so I'll read the question back to you
8 one more time just so you've all got it and maybe you'll
9 hear it a little differently than I did. And then once
10 I'm done reading it I'll have the clerk circulate it to
11 you so that you can each read it for yourselves.

12 Is each defendant reviewed independently to
13 Indictment #1, Instruction #5, question mark. There is
14 a question if someone, slash, everyone is found guilty
15 of conspiracy do they each get separate consideration in
16 relation to 50 grams, slash, 500 grams, slash, marijuana
17 per the instruction, that's in parentheses by the way,
18 or are we only looking at 50 grams, slash, 500 grams as
19 listed in the verdict form? Or to say otherwise, if
20 "conspiracy" is found for everyone is everyone "50
21 grams" and, slash, or, everyone "500 grams" and, slash,
22 or, marijuana. And actually there's a third question.

23 Having read this thing for the fourth time,
24 it appears to me that the third question is: We dropped
25 marijuana off the verdict form and so do we worry about

1 it in the instruction or do we follow the verdict form?
2 And the answer to that I think is plainly follow the
3 verdict form.

4 In any event I'll have each of you take
5 however long you think to read it and then we'll talk
6 about where we should go from here. If defense counsel
7 want an opportunity to talk to each other, I'm fine with
8 that, too. What I'm going to do personally at this
9 point is leave and so if any of you guys want to talk
10 about anything either with the government or amongst
11 yourselves I'm good with that. And we'll stand in
12 recess till you tell me that you're ready to go, all
13 right? Thank you.

14 (Recess taken; 11:20 a.m. to 11:25 a.m.)

15 (11:25 a.m., In open court, all counsel and
16 the Defendants present, outside the presence and hearing
17 of the jury:)

18 THE COURT: We're back on the record in a
19 case entitled United States of America versus Ferris
20 Lee, et al. Each of the defendants is present along
21 with their counsel. The AUSAs who have tried the case
22 are present as well. We have a question from the jury.
23 We're outside the presence of the jury at this point.

24 Mr. Myers, does the United States have a
25 position?

1 MR. MYERS: Yes, we do, Your Honor. Our
2 recommendation as to how to answer this question would
3 be as follows: One, reiterate the instruction that was
4 previously stated that sentencing is not to be
5 considered. Secondly -- and I noticed in the verdict
6 form the Court -- when putting together the instruction
7 on the issue of quantity, there wasn't a typical
8 reasonable foreseeability phrase that is typically used.
9 So we would suggest something like the following: To
10 determine drug quantity, the question to be asked is
11 whether it was reasonably foreseeable by the defendant
12 that the conspiracy, as a whole, involved either greater
13 than 50 grams of cocaine base and/or greater than 500
14 grams of a mixture containing the cocaine and/or
15 marijuana. I think that makes it more clear and is an
16 accurate statement of the law.

17 THE COURT: All right. Mr. Goff?

18 MR. GOFF: Your Honor, Defendant Ferris Lee
19 would object to any modification of the instructions as
20 previously given and submitted to the jury and would ask
21 that the jury simply be advised that they have been
22 given the instructions. The instructions are the law in
23 the case and that they should take those instructions
24 that they have already been given and decide the case.

25 THE COURT: Mr. Mottinger?

1 MR. MOTTINGER: That is our position as
2 well.

3 THE COURT: Mr. Loos?

4 MR. LOOS: That's my position as well, Your
5 Honor. And I'd add that I don't see any need to re-read
6 the instruction on sentencing. I don't see anything
7 about sentencing in the question, Your Honor.

8 MS. GOETZ: I would join with my colleagues
9 with regard to the instructions are the instructions.
10 And I agree with Mr. Loos as far as sentencing. I mean,
11 I know that we know that this deals with sentencing, but
12 I don't get from them that they understand that the 50,
13 500, marijuana deals with sentencing. So I don't know
14 that it's necessary to bring the sentencing aspect up.

15 THE COURT: All right. I want to get this
16 all right so I understand what the defendants' position
17 is exactly, okay? Because what I'm hearing is we do
18 what we do in most cases and, that is, we tell them read
19 the instructions, answer the questions and don't worry
20 about it, all right?

21 It's pretty clear to me that they have asked
22 the question as to whether or not they ought to
23 deliberate individually for each of the defendants as to
24 quantity. And it also seems to me that the law is
25 pretty clear that each individual is to be considered

1 separately as to the quantity that would be reasonably
2 foreseeable from the point of view at that party, okay?
3 And it's hard for me to imagine, but you guys may be
4 saying this, that you want to hitch your wagons all
5 together in one big long row and just say: Okay, just
6 deliberate away.

7 I'm not sure that I quite understand that.
8 But my concern about that is that let's say you're one
9 of the people that really is tied to very few drugs in
10 this conspiracy. You might not be very happy to be just
11 sort of lumped in with everybody else. I mean, they're
12 kind of asking if we find one person guilty do we find
13 them all guilty on the quantity?

14 MR. GOFF: Your Honor, just to be clear, the
15 Court does understand Mr. Lee's position. We'd ask that
16 the jury be advised that they have been given the
17 instructions. The instructions are the law in the case
18 and be asked to determine the case based on that.
19 That's our position, Your Honor.

20 DEFENDANT ROYSTON: I got a question.

21 THE COURT: Ask away.

22 DEFENDANT ROYSTON: In the instructions --
23 isn't it read out in the instructions that they are to
24 look at each individual independently?

25 THE COURT: It is. What I'm telling you

1 is -- read what it says after "or to say." And that
2 looks to me to be a very clear if A is true do we
3 automatically find B? And the answer to that is
4 colossally no. B must be considered separately as to
5 each individual defendant.

6 DEFENDANT ROYSTON: So if I get this
7 straight then the conspiracy and the weight amounts
8 ought to be considered separately for each individual,
9 right?

10 THE COURT: They're supposed to be. And I'm
11 reading that question and wondering if the jury gets
12 that. And if the jury doesn't get that we should tell
13 them that.

14 DEFENDANT ROYSTON: Yeah.

15 THE COURT: I think that the elements that
16 we've given are frankly the law of the case we gave
17 them. Nobody objected to them. What I wished I would
18 have done, what I should have done, is really pretty
19 irrelevant at this point. It places a higher burden on
20 the government than what they would have had otherwise.
21 And so I think there's no harm in it to the defendants,
22 okay? But I think there's harm in letting them
23 deliberate on the quantity without clarifying it.
24 That's my thought.

25 Now, you know, there's also strategic

1 reasons that you might want to talk with your lawyers
2 about as to why you might insist on persisting in the
3 position that you've taken and that Mr. Goff has taken.
4 I think that Mr. Goff has made a tactical decision at
5 this point that Mr. Lee wants it to go the way it is.

6 MR. LOOS: Your Honor, Mr. Forest has
7 indicated he wants some sort of clarification regarding
8 the last sentence anyway to clarify that they do need to
9 put an amount on each separate defendant.

10 THE COURT: Ms. Goetz?

11 MS. GOETZ: We join with Mr. Loos's position
12 as far as --

13 MR. MOTTINGER: Your Honor, I would agree
14 but I would strenuously resist having the Court re-read
15 the penalty instruction.

16 THE COURT: I'm not going to re-read any
17 instructions. I'm going to just point to the whole
18 instruction -- to the instructions as a whole, reconcile
19 them to the best of their ability. They do constitute
20 the law of the case at this point. Like I said, I think
21 they place a higher burden on the government than what
22 the law would actually do. It holds them to the burden
23 of their Indictment. I think it takes away your
24 argument that there's an unlawful variance between the
25 Indictment and the instructions or at least greatly

1 diminishes it because, you know, that's the way that is.
2 But I think we've got to answer something.

3 I'm going to write something though
4 considering how -- the great success I've had
5 instructing these folks so far and when I get something
6 written I'll bring it back. After you've had a chance
7 to read it, we'll talk about it. Thank you.

8 (Recess taken; 11:35 a.m. to 12:00 noon)

9 (12:00 noon, In open court, all counsel and
10 the Defendants present, outside the presence and hearing
11 of the jury:)

12 THE COURT: We're back on the record in a
13 case entitled United States versus Lee, Royston, Forest
14 and Dietz. Each of the defendants are present along
15 with their counsel of record. Counsel of record for the
16 United States appears as well.

17 Mr. Myers, any objection to the proposed
18 answer?

19 MR. MYERS: No, Your Honor.

20 THE COURT: Mr. Goff, do you persist in your
21 objection to the answer?

22 MR. GOFF: Yes, Your Honor. And I've
23 discussed it with my client and we agree jointly that
24 the jury should be instructed that they have been
25 instructed and that's the law.

1 THE COURT: Mr. Mottinger?

2 MR. MOTTINGER: Your Honor, I've reviewed
3 the question again a couple times with Mr. Royston and
4 the Court's answer. We're satisfied with the Court's
5 answer to the question.

6 THE COURT: Thank you. Mr. Loos?

7 MR. LOOS: I have no objection to this.

8 THE COURT: Thank you. Ms. Goetz?

9 MR. GOETZ: I have no objection.

10 THE COURT: Let's go ahead and bring the
11 jury in.

12 (12:05 p.m., In open court, all counsel and
13 the Defendants present, in the presence and hearing of
14 the jury:)

15 THE COURT: We're back on the record in a
16 case entitled United States versus Ferris Lee, Marcus
17 Royston, Maurice Forest and Jessica Dietz. Mr. Lee
18 appears personally along with his counsel, Mr. Goff.
19 Mr. Royston appears with his counsel, Mr. Mottinger.
20 Mr. Forest appears with his counsel, Mr. Loos.
21 Ms. Dietz appears with her counsel, Ms. Goetz.
22 Mr. Myers and Ms. Lawyer appear on behalf of the United
23 States.

24 The Court's received a question from the
25 jury. It reads as follows: Is each defendant reviewed

1 independently to Indictment #1, Instruction #5? There
2 is a question if someone, slash, everyone is found
3 guilty of conspiracy do they each get separate
4 consideration in relation to 50 grams, slash, 500 grams,
5 slash, marijuana, paren, per instruction, closed paren,
6 or are we only looking at 50 grams, slash, 500 grams as
7 listed in the Verdict Form? Or to say otherwise, if,
8 quote, conspiracy, end quote, is found for everyone is
9 everyone, quote, 50 grams, end quote, and/or everyone,
10 quote, 500 grams, end quote, and/or marijuana, question
11 mark, and it's signed by Arthur Grochow.

12 "Ladies and Gentlemen of the jury, you
13 should read the instructions and follow the jury verdict
14 form. I also further instruct you as follows:

15 "When considering drug quantities, each
16 individual who has been found guilty of the conspiracy
17 must be considered individually. A conspirator is
18 responsible only for the drugs involved in the
19 conspiracy that he was either (1) personally aware of or
20 which were (2) reasonably foreseeable to him in light of
21 his agreement to participate in the conspiracy. An
22 individual conspirator is not responsible for any
23 quantity of drugs that he did not know about and which
24 were not reasonably foreseeable to him. It is not
25 necessary, however, that the conspirator have actual

1 knowledge of the quantity; rather, it is only required
2 that the quantity be reasonably foreseeable to him in
3 light of all the circumstances of which he was aware."

4 Does the United States have any objection to
5 sending the written instruction back with the jury?

6 MR. MYERS: No, Your Honor.

7 THE COURT: Mr. Goff, beyond what you've
8 already stated?

9 MR. GOFF: No, Your Honor.

10 THE COURT: Mr. Mottinger?

11 MR. MOTTINGER: I would object to the new
12 instruction going back. The question has been answered.

13 THE COURT: Mr. Loos?

14 MR. LOOS: I'd join Mr. Mottinger's
15 objection.

16 MS. GOETZ: I join as well.

17 THE COURT: Okay. I'll not send it back
18 with them in light of the objections.

19 Ladies and gentlemen of the jury, does that
20 answer your question?

21 FOREPERSON GROCHOW: Yes.

22 THE COURT: You may return. I understand --

23 FOREPERSON GROCHOW: Judge, we want to break
24 for lunch if we may.

25 THE COURT: You may break for lunch if you

1 wish. And what time would you like to --

2 FOREPERSON GROCHOW: 1 o'clock.

3 THE COURT: Ladies and gentlemen of the
4 jury, you're not to discuss the case unless all jurors
5 are present. Please keep an open mind consistent with
6 the point where you are at in your deliberations.

7 Return at 1 o'clock. Thank you.

8 (Jury excused.)

9 (In open court, all counsel and the
10 Defendants present, outside the presence and hearing of
11 the jury:)

12 THE COURT: Anything anyone wants to put on
13 the record? Just a second. Please be seated. We're
14 back on the record outside the presence of the jury.
15 The defendants are present along with their counsel.
16 U.S. attorneys are present as well.

17 Mr. Mottinger, your client wishes to put
18 something on the record?

19 MR. MOTTINGER: I believe so.

20 THE COURT: All right. Mr. Royston?

21 DEFENDANT ROYSTON: From what I take it, I
22 need to be clarified on this, but did you just give them
23 a new instruction opposed to the one that they already
24 had? Because that's what it kind of sounded like to me,
25 like you instructed them as to something new as opposed

1 to what they already had.

2 THE COURT: They had no instruction on the
3 issue of how do you deliberate on quantity, and I gave
4 them a new instruction on quantity that says that each
5 of you must be considered separately from the others and
6 that you can only be responsible individually for the
7 drugs that were reasonably foreseeable to you, all
8 right? So that's what I told them. And that is a new
9 instruction that I had not previously given them.

10 DEFENDANT ROYSTON: Oh, see, and I was
11 against that. I wanted them to just go off with the
12 instructions that they already had. I didn't know you
13 was going to come out here and give them a whole new
14 instruction. I thought that you was just going to tell
15 them that they just have to weigh us all individually,
16 but given this whole new -- didn't you just hear the man
17 say it was a new instruction?

18 THE COURT: Right.

19 DEFENDANT ROYSTON: This wasn't in the
20 original instruction.

21 THE COURT: Yeah. Here's the story: They
22 asked a question whether if they found one of you guilty
23 and that there was 50 grams of cocaine involved or 500
24 grams of -- 50 grams of cocaine base involved or 500
25 grams of cocaine involved, whether everyone was guilty.

1 We answered their instruction saying: No, you have to
2 consider everyone separately.

3 Now if you would have preferred to have it
4 the other way that's fine. I never would have done
5 that. I gave the instruction. If you'd have objected
6 I'd have done the same thing I did because, frankly, I'm
7 not letting this jury decide that, you know, we find A
8 to be true; that is, we find more than 50 grams of
9 cocaine base were true as to one defendant that every
10 defendant gets to be guilty as a result of that.
11 That's not the law. It's not fair. It's not just.
12 I'm not going to do that.

13 And what I did is I answered their question.
14 I gave them a different instruction than what I'd given
15 before. It's an issue that if it needs to be decided by
16 somebody at this point I've made my decision.
17 Depending on the outcome, the Court of Appeals can
18 decide whether I did it right or wrong, okay?

19 MR. GOFF: Your Honor?

20 THE COURT: Yes.

21 MR. GOFF: Ordinarily we don't get the
22 questions. Do you want those back?

23 THE COURT: They're a matter of public
24 record in this Court because the copies of the questions
25 are attached to the clerk's minutes anyhow. So you

1 don't need to turn it back.

2 MR. GOFF: Very well, thank you.

3 THE COURT: All right. Thank you.

4 (Recess taken; 12:10 p.m. to 2:20 p.m.)

5 (2:20 p.m., In open court, all counsel and
6 the Defendants present, outside the presence and hearing
7 of the jury:)

8 THE COURT: We'll go on the record in a case
9 entitled United States of America versus Ferris Lee, et
10 al. The record should reflect that each of the
11 defendants is present along with their counsel of
12 record, and the United States attorneys of record appear
13 as well. I have received a question from the jury. It
14 reads as follows: On the verdict form under the list of
15 people on the last page it has Rashad, quote, Rob, end
16 quote, Johnson. Is this the same as Rashad, quote, Rob
17 Jackson, Arthur Grochow.

18 And the answer to that question is
19 definitely yes because that's a typographical error that
20 we caught in three places and missed in one. And so
21 that's the story to that. I'm inclined to just simply
22 send them a written note back that says this: Quote,
23 the answer to your question is "yes." Dated this 28th
24 day of May, 2010, Ralph R. Erickson, Chief District
25 Judge. And then I think we should stay here for a

1 minute because if that's where they're at on the verdict
2 form I suspect they don't have much longer to go.

3 Any objection from the United States?

4 MR. MYERS: No, Your Honor.

5 THE COURT: From the defense, Mr. Goff?

6 MR. GOFF: No objection, Your Honor?

7 THE COURT: Mr. Mottinger?

8 MR. MOTTINGER: No.

9 THE COURT: Mr. Loos?

10 MR. LOOS: No, Your Honor.

11 THE COURT: Ms. Goetz?

12 MS. GOETZ: No objection.

13 THE COURT: Go ahead and bring the note to
14 them.

15 (Recess taken; 2:25 p.m. to 2:35 p.m.)

16 (2:35 p.m., In open court, all counsel and
17 the Defendants present, in the presence and hearing of
18 the jury:)

19 THE COURT: Good afternoon. We'll go on the
20 record in a case entitled United States of America
21 versus Ferris Lee, Marcus Royston, Maurice Forest and
22 Jessica Dietz. The record should reflect that Mr. Lee
23 appears personally along with his counsel, Mr. Goff;
24 Mr. Royston along with his counsel, Mr. Mottinger;
25 Mr. Forest along with his counsel, Mr. Loos; Ms. Dietz

1 along with her counsel Mr. -- Ms. Goetz. Mr. Myers and
2 Ms. Lawyer appear on behalf of the United States. The
3 jury's in the box.

4 The Court's informed that the jury has
5 concluded their deliberations. Have you reached a
6 verdict?

7 FOREPERSON GROCHOW: Yes, we have.

8 THE COURT: Could you hand it to the
9 bailiff, please.

10 FOREPERSON GROCHOW: (Indicating.)

11 THE COURT: I'm going to direct the clerk to
12 read the verdict at this point. In light of its length,
13 the defendants may remain seated, and you may be seated
14 if you'd prefer.

15 THE CLERK: In the United States District
16 Court for the District of North Dakota Southeastern
17 Division

18 United States of America, Plaintiff, vs.
19 Ferris Lavelle Lee, also known as Vito; Marcus Jermaine
20 Royston, also known as BD; Maurice Forest; and Jessica
21 Marie Dietz, Defendants. Criminal No. 3:09-cr-155.

22 VERDICT FORM Count One: We, the jury, find
23 the defendant, Ferris Lavelle Lee, also known as Vito,
24 guilty of the offense of conspiracy to possess with
25 intent to distribute and distribute a controlled

1 substance, as charged in Count One of the Indictment.

2 If you find the defendant, Ferris Lavelle
3 Lee, guilty of conspiracy to possess with intent to
4 distribute and distribute a controlled substance, as
5 charged in Count One of the Indictment, do you
6 unanimously agree, by proof beyond a reasonable doubt,
7 that the quantity of a mixture and substance containing
8 cocaine base, which was the subject of the conspiracy,
9 was in excess of 50 grams? Answer, yes.

10 If you find the defendant, Ferris Lavelle
11 Lee, guilty of conspiracy to possess with intent to
12 distribute and distribute a controlled substance, as
13 charged in Count One of the Indictment, do you
14 unanimously agree, by proof beyond a reasonable doubt,
15 that the quantity of a mixture and substance containing
16 cocaine, which was the subject of the conspiracy, was in
17 excess of 500 grams? Answer, yes.

18 We, the jury, find the defendant, Marcus
19 Royston, also known as BD, guilty of the offense of
20 conspiracy to possess with intent to distribute and
21 distribute a controlled substance, as charged in Count
22 One of the Indictment. If you find the defendant,
23 Marcus Royston, guilty of conspiracy to possess with
24 intent to distribute and distribute a controlled
25 substance, as charged in Count One of the Indictment, do

1 you unanimously agree, by proof beyond a reasonable
2 doubt, that the quantity of a mixture and substance
3 containing cocaine base, which was the subject of the
4 conspiracy, was in excess of 50 grams? Answer, yes.

5 If you find the defendant, Marcus Royston,
6 guilty of conspiracy to possess with intent to
7 distribute and distribute a controlled substance, as
8 charged in Count One of the Indictment, do you
9 unanimously agree, by proof beyond a reasonable doubt,
10 that the quantity of a mixture and substance containing
11 cocaine, which was the subject of the conspiracy, was in
12 excess of 500 grams? Answer, no.

13 We, the jury, find the defendant, Maurice
14 Forest, guilty of the offense of conspiracy to possess
15 with intent to distribute and distribute a controlled
16 substance, as charged in Count One of the Indictment.
17 If you find the defendant, Maurice Forest, guilty of
18 conspiracy to possess with intent to distribute and
19 distribute a controlled substance, as charged in Count
20 One of the Indictment, do you unanimously agree, by
21 proof beyond a reasonable doubt, that the quantity of a
22 mixture and substance containing cocaine base, which was
23 the subject of the conspiracy, was in excess of 50
24 grams? Answer, no.

25 If you find the defendant, Maurice Forest,

1 guilty of conspiracy to possess with intent to
2 distribute and distribute a controlled substance, as
3 charged in Count One of the Indictment, do you
4 unanimously agree, by proof beyond a reasonable doubt,
5 that the quantity of a mixture and substance containing
6 cocaine, which was the subject of the conspiracy, was in
7 excess of 500 grams? Answer, no.

8 We, the jury, find the defendant, Jessica
9 Dietz, not guilty of the offense of conspiracy to
10 possess with intent to distribute and distribute a
11 controlled substance, as charged in Count One of the
12 Indictment.

13 Aiding and abetting: We, the jury, find the
14 defendant, Ferris Lavelle Lee, also known as Vito,
15 guilty of the offense of aiding and abetting the crime
16 of conspiracy to possess with intent to distribute and
17 distribute a controlled substance, as charged in Count
18 One of the Indictment.

19 If you find the defendant, Ferris Lavelle
20 Lee, guilty of aiding and abetting a conspiracy to
21 possess with intent to distribute and distribute a
22 controlled substance, as charged in Count One of the
23 Indictment, do you unanimously agree, by proof beyond a
24 reasonable doubt, that the quantity of a mixture and
25 substance containing cocaine base, which was the subject

1 of the aiding and abetting, was in excess of 50 grams?

2 Answer, yes.

3 If you find the defendant, Ferris Lavelle
4 Lee, guilty of aiding and abetting a conspiracy to
5 possess with intent to distribute and distribute a
6 controlled substance, as charged in Count One of the
7 Indictment, do you unanimously agree, by proof beyond a
8 reasonable doubt, that the quantity of a mixture and
9 substance containing cocaine, which was the subject of
10 the aiding and abetting, was in excess of 500 grams?

11 Answer, yes.

12 We, the jury, find the defendant, Marcus
13 Royston, also known as BD, guilty of the offense of
14 aiding and abetting the crime of conspiracy to possess
15 with intent to distribute and distribute a controlled
16 substance, as charged in Count One of the Indictment.

17 If you find the defendant, Marcus Royston,
18 guilty of aiding and abetting a conspiracy to possess
19 with intent to distribute and distribute a controlled
20 substance, as charged in Count One of the Indictment, do
21 you unanimously agree, by proof beyond a reasonable
22 doubt, that the quantity of a mixture and substance
23 containing cocaine base, which was the subject of the
24 aiding and abetting, was in excess of 50 grams? Answer,
25 yes.

1 If you find the defendant, Marcus Royston,
2 guilty of aiding and abetting a conspiracy to possess
3 with intent to distribute and distribute a controlled
4 substance, as charged in Count One of the Indictment, do
5 you unanimously agree, by proof beyond a reasonable
6 doubt, that the quantity of a mixture and substance
7 containing cocaine, which was the subject of aiding and
8 abetting, was in excess of 500 grams? Answer, no.

9 We, the jury, find the defendant, Maurice
10 Forest, guilty of the offense of aiding and abetting a
11 crime of conspiracy to possess with intent to distribute
12 and distribute a controlled substance, as charged in
13 Count One of the Indictment.

14 If you find the defendant, Maurice Forest,
15 guilty of aiding and abetting a conspiracy to possess
16 with intent to distribute and distribute a controlled
17 substance, as charged in Count One of the Indictment, do
18 you unanimously agree, by proof beyond a reasonable
19 doubt, that the quantity of the mixture and substance
20 containing cocaine base, which was the subject of the
21 aiding and abetting, was in excess of 50 grams? Answer,
22 yes.

23 If you find the defendant, Maurice Forest,
24 guilty of aiding and abetting a conspiracy to possess
25 with intent to distribute and distribute a controlled

1 substance, as charged in Count One of the Indictment, do
2 you unanimously agree, by proof beyond a reasonable
3 doubt, that the quantity of a mixture and substance
4 containing cocaine, which was the subject of the aiding
5 and abetting, was in excess of 500 grams? Answer, no.

6 We, the jury, find the defendant, Jessica
7 Dietz, not guilty.

8 Count Two - aiding and abetting: We, the
9 jury, find the defendant, Ferris Lavelle Lee, also known
10 as Vito, guilty of the offense of aiding and abetting
11 the crime of distribution of a controlled substance, as
12 charged in Count Two of the Indictment.

13 Count Three - aiding and abetting: We, the
14 jury, find the defendant, Ferris Lavelle Lee, also known
15 as Vito, guilty of the offense of aiding and abetting
16 the crime of distribution of a controlled substance, as
17 charged in Count Three of the Indictment.

18 Count Four - aiding and abetting: We, the
19 jury, find the defendant, Ferris Lavelle Lee, also known
20 as Vito, guilty of the offense of aiding and abetting
21 the crime of distribution of a controlled substance, as
22 charged in Count Four of the Indictment.

23 Count Five: We, the jury, find the
24 defendant, Ferris Lavelle Lee, also known as Vito,
25 guilty of the offense of distribution of a controlled

1 substance, as charged in Count Five of the Indictment.

2 Aiding and abetting: We, the jury, find the
3 defendant, Ferris Lavelle Lee, also known as Vito,
4 guilty of the offense of aiding and abetting the crime
5 of distribution of a controlled substance, as charged in
6 Count Five of the Indictment.

7 Count Six - aiding and abetting: We, the
8 jury, find the defendant, Ferris Lavelle Lee, also known
9 as Vito, guilty of the offense of aiding and abetting
10 the crime of distribution of a controlled substance, as
11 charged in Count Six of the Indictment.

12 Count Seven - aiding and abetting: We, the
13 jury, find the defendant, Ferris Lavelle Lee, also known
14 as Vito, guilty of the offense of aiding and abetting
15 the crime of distribution of a controlled substance, as
16 charged in Count Seven of the Indictment.

17 Count Eight: We, the jury, find the
18 defendant, Ferris Lavelle Lee, also known as Vito,
19 guilty of the offense of distribution of a controlled
20 substance, as charged in Count Eight of the Indictment.

21 Aiding and abetting: We, the jury, find the
22 defendant, Ferris Lavelle Lee, also known as Vito,
23 guilty of the offense of aiding and abetting the crime
24 of distribution of a controlled substance, as charged in
25 Count Eight of the Indictment.

1 Count Nine: We, the jury, find the
2 defendant, Ferris Lavelle Lee, also known as Vito,
3 guilty of the offense of distribution of a controlled
4 substance, as charged in Count Nine of the Indictment.

5 Aiding and abetting: We, the jury, find the
6 defendant, Ferris Lavelle Lee, also known as Vito,
7 guilty of the offense of aiding and abetting the crime
8 of distribution of a controlled substance, as charged in
9 Count Nine of the Indictment.

10 Count Ten: We, the jury, find the
11 defendant, Ferris Lavelle Lee, also known as Vito,
12 guilty of the offense of distribution of a controlled
13 substance, as charged in Count Ten of the Indictment.

14 Aiding and abetting: We, the jury, find the
15 defendant, Ferris Lavelle Lee, also known as Vito,
16 guilty of the offense of aiding and abetting the crime
17 of distribution of a controlled substance, as charged in
18 Count Ten of the Indictment.

19 Count Eleven: We, the jury, find the
20 defendant, Ferris Lavelle Lee, also known as Vito,
21 guilty of the offense of distribution of a controlled
22 substance, as charged in Count Eleven of the Indictment.

23 We, the jury, find the defendant, Maurice
24 Forest, guilty of the offense of distribution of a
25 controlled substance, as charged in Count Eleven of the

1 Indictment.

2 Aiding and abetting: We, the jury, find the
3 defendant, Ferris Lavelle Lee, also known as Vito,
4 guilty of the offense of aiding and abetting the crime
5 of distribution of a controlled substance, as charged in
6 Count Eleven of the Indictment.

7 We, the jury, find the defendant, Maurice
8 Forest, guilty of the offense of aiding and abetting the
9 crime of distribution of a controlled substance, as
10 charged in Count Eleven of the Indictment.

11 Count Twelve: We, the jury, find the
12 defendant, Ferris Lavelle Lee, also known as Vito,
13 guilty of the offense of distribution of a controlled
14 substance, as charged in Count Twelve of the Indictment.

15 We, the jury, find the defendant, Marcus
16 Royston, also known as BD, guilty of the offense of
17 distribution of a controlled substance, as charged in
18 Count Twelve of the Indictment.

19 Aiding and abetting: We, the jury, find the
20 defendant, Ferris Lavelle Lee, also known as Vito,
21 guilty of the offense of aiding and abetting the crime
22 of distribution of a controlled substance, as charged in
23 Count Twelve of the Indictment.

24 We, the jury, find the defendant, Marcus
25 Royston, also known as BD, guilty of the offense of

1 aiding and abetting the crime of distribution of a
2 controlled substance, as charged in Count Twelve of the
3 Indictment.

4 Count Thirteen: We, the jury, find the
5 defendant, Ferris Lavelle Lee, also known as Vito, not
6 guilty of the offense of employment or use of person
7 under 18 years of age in a drug operation, as charged in
8 Count Thirteen of the Indictment.

9 Count Fourteen: We, the jury, find the
10 defendant, Ferris Lavelle Lee, also known as Vito,
11 guilty of the offense of continuing criminal enterprise,
12 as charged in Count Fourteen of the Indictment.

13 If you find the defendant, Ferris Lavelle
14 Lee, guilty of continuing criminal enterprise, as
15 charged in Count Fourteen, please answer the following
16 questions:

17 No. 1, from the following list, indicate
18 which of the alleged violations that you unanimously
19 agree, by proof beyond a reasonable doubt, constituted
20 the series of three or more related felony violations of
21 the federal controlled substance laws:

22 Answer, (A), conspiracy to possess with
23 intent to distribute and distribute a controlled
24 substance as charged in Count One;

25 (B), aiding and abetting the distribution of

1 a controlled substance as charged in Count Two;

2 (C), aiding and abetting the distribution of
3 a controlled substance as charged in Count Three;

4 (D), aiding and abetting the distribution of
5 a controlled substance as charged in Count Four;

6 (E), distribution of a controlled substance
7 as charged in Count Five;

8 (F), aiding and abetting the distribution of
9 a controlled substance as charged in Count Six;

10 (G), aiding and abetting the distribution of
11 a controlled substance as charged in Count Seven;

12 (H), distribution of a controlled substance
13 as charged in Count Eight;

14 (I), distribution of a controlled substance
15 as charged in Count Nine;

16 (J), distribution of a controlled substance
17 as charged in Count Ten;

18 (K), distribution of a controlled substance
19 as charged in Count Eleven;

20 (L), distribution of a controlled substance
21 as charged in Count Twelve;

22 No. 2: From the following list, indicate
23 which five or more persons that you unanimously agree,
24 by proof beyond a reasonable doubt, that the defendant
25 organized, supervised, or managed in furtherance of the

1 continuing criminal enterprise:

2 Answers: Jake Northern, also known as JB;
3 Tara Bauer; Tambi Bishop; Jonathan Jason McClarin, also
4 known as Jay; Herbert Brown; Lloyd Johnson; Marcus
5 Royston; Rashad "Rob" Johnson Jackson; Maurice Forest,
6 Shannon Harjo, Casey Peterson.

7 Dated this 28th day of May, 2010, signed by
8 Arthur Grochow, the jury foreperson, and the
9 certification is signed by all 12 members of the jury.

10 THE COURT: Thank you. Ms. Dietz, if you'd
11 please stand. The jury having returned a verdict of not
12 guilty, it is the order of the Court that the Indictment
13 against Ms. Dietz be dismissed; that she be exonerated
14 and you're free to leave as soon as the proceedings are
15 closed. Thank you.

16 Ladies and gentlemen of the jury, is this
17 your verdict so say you one so say you all?

18 (Jury indicating yes.)

19 THE COURT: And at this point I'm going to
20 direct that the jury be polled.

21 THE CLERK: Arthur Grochow, is this your
22 verdict as I have read?

23 FOREPERSON GROCHOW: Yes.

24 THE CLERK: Dorothy Jorgenson, is this your
25 verdict as I have read?

1 JUROR JORGENSON: Yes.

2 THE CLERK: Louise Tengwall, is this your
3 verdict as I have read?

4 JUROR TENGWALL: Yes.

5 THE CLERK: Nancy Johnson, is in your
6 verdict as I have read?

7 JUROR N. JOHNSON: Yes.

8 THE CLERK: Evelyn Sova, is this your
9 verdict as I have read?

10 JUROR SOVA: Yes.

11 THE CLERK: Ashley Johnson, is this your
12 verdict as I have read?

13 JUROR A. JOHNSON: Yes.

14 THE CLERK: John Olson, is this your verdict
15 as I have read?

16 JUROR OLSON: Yes.

17 THE CLERK: Everlyn Anderson, Jr., is this
18 your verdict as I have read?

19 JUROR ANDERSON: Yes.

20 THE CLERK: Christine Maddock, is this your
21 verdict as I have read?

22 JUROR MADDOCK: Yes.

23 THE CLERK: Gregory Arthur, is this your
24 verdict as I have read?

25 JUROR ARTHUR: Yes.

1 THE CLERK: Pamela Oberlander, is this your
2 verdict as I have read?

3 JUROR OBERLANDER: Yes.

4 THE CLERK: Ann Oksendal, is this your
5 verdict as I have read?

6 JUROR OKSENDAL: Yes.

7 THE COURT: Thank you. It appears to be
8 unanimous. Ladies and gentlemen of the jury, I want to
9 thank you very much for your time during these past
10 weeks. Without your willingness to serve, our system of
11 justice would not function. You're free to leave at
12 this time so thank you.

13 (Jury released.)

14 (In open court, all counsel and the
15 Defendants present, outside the presence and hearing of
16 the jury:)

17 THE COURT: We're back on the record in a
18 case entitled United States of America versus Ferris
19 Lee, Marcus Royston and Maurice Forest. It's file
20 No. 3:09-cr-155. Each defendant appears personally
21 along with their counsel. Ms. Dietz, who's been
22 exonerated, appears personally as well as her lawyer,
23 Ms. Goetz.

24 The Court will order that a Presentence
25 Investigation Report be prepared in this matter, that

1 the original be lodged with the Court, that copies be
2 made available for -- that copies be made available to
3 the parties. Any objections, corrections or exceptions
4 ought to be raised consistent with the rule and with the
5 local practice.

6 We will set the sentencing hearing in these
7 matters for Monday, August the 30th, 2010. We'll set
8 them on as follows: We'll take Mr. Lee's sentencing up
9 at 11 o'clock a.m. We'll take Mr. Royston's sentencing
10 up at 2:15, and we will take Mr. Forest's sentencing up
11 at 3 o'clock.

12 Is there anything further to come before the
13 Court from the United States?

14 MR. MYERS: No, Your Honor.

15 THE COURT: From Mr. Lee, Mr. Goff?

16 MR. GOFF: No, Your Honor.

17 THE COURT: From Mr. Royston, Mr. Mottinger?

18 MR. MOTTINGER: No, sir.

19 THE COURT: And from Mr. Forest, Mr. Loos?

20 MR. LOOS: No, Your Honor.

21 THE COURT: We will stand in recess in this
22 matter until Monday, August 30th, 2010, at the times
23 indicated.

24 (Adjourned at 3:00 p.m.)
25

CERTIFICATE OF REPORTER

I, Kelly A. Kroke, a duly appointed
Registered Professional Reporter;

DO HEREBY CERTIFY that I reported in
shorthand the foregoing proceedings had and made a
record at the time and place indicated.

I DO HEREBY FURTHER CERTIFY that the
foregoing and attached (2,121) typewritten pages contain
an accurate transcript of my shorthand notes then and
there taken.

Dated this 15th day of January, 2011.

/s/ Kelly A. Kroke
KELLY A. KROKE - RPR, RMR
United States District Court Reporter
District of North Dakota
Southeastern Division